

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Reunamaki, et al.
Title: WIDEBAND
COMMUNICATION METHOD
Appl. No.: 10/574,591
International Filing Date: 11/12/2004
371(c) Date: 4/4/2006
Patent No.: 7,613,222
Grant Date: 11/3/2009
Examiner: Curtis B. Odom
Art Unit: 2611
Confirmation Number: 3965

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 11/3/2009 as U.S. Patent No. 7,613,222.

The Patent Office determined that the patent was entitled to 531 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 701 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	729 days
(b) Total Applicant delay:	28 days
Final PTA Determination:	701 days

Applicants therefore respectfully request that the patent be accorded 701 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

By  _____

Date December 29, 2009

FOLEY & LARDNER LLP
Customer Number: 23524
Telephone: (608) 258-4263
Facsimile: (608) 258-4258

Callie M. Bell
Attorney for Applicant
Registration No. 54,989

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 088245-1035

Application Number: 10/574591

Patent Number: N/A

CLOSE WINDOW

ALL CASES

SELECT CASES

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	11/17/2003	-912		
Edit Delete	International Filing Date	11/12/2004	-551		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	05/17/2006	0		
	PCT National Stage Commencement Date	05/17/2006	0		
	14 month From Application date	07/17/2007	426		
Edit Delete	Non-Final Office Action	01/26/2009	985	559	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/20/2009	1,069		
Edit Delete	Notice of Allowance	04/27/2009	1,076		
	3 Year Period Starts	05/17/2009	1,096		
Edit Delete	Issue Fee Paid	07/21/2009	1,161		
Edit Delete	Rule 312 Amendment Received at PTO	07/24/2009	1,164		
Edit Delete	Response to Rule 312 Communication Received	08/20/2009	1,191		28
	Projected Patent Grant Date	11/03/2009	1,266	170	
			Totals:	729	28
			PTA:	701	

Created and maintained by

FOLEY

FOLEY & LARDNER LLP

Version: 3.02.05

LOGIN: Linda Anderson

IP: 10.24.4.21

Foley & Lardner LLP